

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

IN RE: ZIMMER NEXGEN KNEE
IMPLANT PRODUCTS LIABILITY
LITIGATION

MDL No. 2272

**APPROVED FORM OF
SHORT FORM COMPLAINT**

This applies to:

JURY TRIAL DEMAND

HARVEY BARRETT, JAMES BERRY,
MARY KNOX, THOMAS ROSE, JANE
ESSLINGER, AND PAULA PONOMASKY

Plaintiffs,

vs.

Case No: 1:12cv1003

Zimmer, Inc., Zimmer Holdings, Inc.,
Zimmer Orthopedic Surgical Products, Inc.

Defendants.

APPROVED SHORT FORM COMPLAINT FOR
ZIMMER NEXGEN KNEE IMPLANT PRODUCTS LIABILITY LITIGATION

Plaintiff, PAULA PONAMSKY, incorporates by reference Plaintiffs' Master Long Form Complaint in In Re: Zimmer NexGen Knee Implant Products Liability Litigation, MDL 2272, filed as of January 12, 2012, as Document Number 211. Pursuant to a Stipulated Order of the PSC in MDL 2272 and Counsel for Defendants, the following Short Form Complaint is approved for use in this action. Where Plaintiff's Complaint was previously transferred into

MDL 2272, this Short Form Complaint and the incorporated Master Long Form Complaint shall serve as an amended Complaint.

Plaintiff selects and indicates by checking off the appropriate spaces, those products and claims that are specific to her case. Where certain claims require specific pleadings or case specific facts and individual information, plaintiff shall add and include them herein.

1. Plaintiff, PAULA PONAMSKY, states and brings this civil action before the Court for the United States District Court for the Northern District of Illinois as a related action in the matter entitled IN RE: ZIMMER NEXGEN KNEE IMPLANT PRODUCTS LIABILITY LITIGATION, MDL No. 2272. Plaintiff is filing this short form complaint as permitted and approved by Order of the MDL 2272 Court, and adopts and incorporates by reference those allegations in the Plaintiffs' Master Long Form Complaint and any and all amendments thereto.

2. This action is brought pursuant to 28 U.S.C. §1332, as diversity of citizenship exists among and between the parties.

3. Venue is proper under 28 U.S.C. §1391 as defendants named herein do business within this district.

4. Plaintiff PAULA PONAMSKY is a resident and citizen of Louisiana and claims damages as set forth below.

5. Plaintiff was born on June 10, 1946.

ALLEGATIONS AS TO DEVICE(S) AND INJURIES

6. Plaintiff was implanted with Zimmer NexGen® Knee devices on her right knee on or about February 1, 2010 at East Jefferson General Hospital by Dr. Chad Millett.

7. On or about February 1, 2010, Plaintiff suffered personal and economic injuries as a result of the implantation of the following Zimmer NexGen® Knee device(s):

_____ Zimmer NexGen LPS-Flex

☐ Zimmer NexGen CR-Flex
☒ Zimmer NexGen GSF LPS-Flex
☐ Zimmer NexGen GSF CR-Flex
☐ Zimmer NexGen MIS Tibia

8. Plaintiff underwent revision surgery with respect to the defective Zimmer NexGen® Knee devices in March 2011 by Dr. Lance Estrada in New Orleans, Louisiana.

9. Plaintiff has suffered injuries as a result of implantation of the Zimmer NexGen® Knee devices manufactured by defendants as described in the forthcoming Plaintiff's Fact Sheet and other responsive documents in discovery provided to the defendants and/or obtained by the defendants through Plaintiff's authorization and are incorporated by reference herein.

10. At the time of implantation with the Zimmer NexGen® Knee devices, the plaintiff resided at 13308 Green Hill Avenue, Baton Rouge, Louisiana 70809.

11. The defendants by their actions or inactions, proximately caused Plaintiff's injuries.

12. Plaintiff claims damages as a result of:

☒ injury to herself/himself
☐ injury to the person represented
☐ wrongful death
☐ survivorship action
☒ economic loss
☒ loss of services
☐ loss of consortium

13. Neither Plaintiff nor her physicians, through the exercise of reasonable diligence, could have detected the defective nature of the Zimmer NexGen® Knee device any earlier than the evidence of loosening and/or other indication for planned revision of the defective devices, or as the facts dictate and produced in discovery.

14. As a result of the injuries Plaintiff sustained, she is entitled to recover compensatory damages for pain and suffering and emotional distress and for economic loss as well as punitive damages.

15. Plaintiff's Zimmer NexGen® Flex Knee device bears catalog number 575015-05 (Right) and lot number 61192504.

ALLEGATIONS AS TO DEFENDANTS
SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

16. The following claims and allegation are asserted by Plaintiffs and are herein adopted by reference:

COUNT I – STRICT LIABILITY DESIGN DEFECT

- ☐ COUNT I (a) ZIMMER LPS-FLEX;
- ☐ COUNT I (b) ZIMMER CR-FLEX;
- ☒ COUNT I (c) ZIMMER GSF LPS-FLEX;
- ☐ COUNT I (d) ZIMMER GSF CR-FLEX;
- ☐ COUNT I (e) ZIMMER MIS TIBIAL COMPONENTS;

COUNT II – STRICT LIABILITY FAILURE TO WARN

- ☐ COUNT II (a) ZIMMER LPS-FLEX ;
- ☐ COUNT II (b) ZIMMER CR-FLEX;
- ☒ COUNT II (c) ZIMMER GSF LPS-FLEX;
- ☐ COUNT II (d) ZIMMER GSF CR-FLEX;

_____ COUNT II (e) ZIMMER MIS TIBIAL COMPONENTS;

COUNT III – STRICT LIABILITY MANUFACTURING DEFECT

_____ COUNT III (a) ZIMMER LPS-FLEX;

_____ COUNT III (b) ZIMMER CR-FLEX;

 X COUNT III (c) ZIMMER GSF LPS-FLEX;

_____ COUNT III (d) ZIMMER GSF CR-FLEX;

_____ COUNT III (e) ZIMMER MIS TIBIAL COMPONENTS;

COUNT IV - NEGLIGENCE

_____ COUNT IV (a) ZIMMER LPS-FLEX;

_____ COUNT IV (b) ZIMMER CR-FLEX;

 X COUNT IV (c) ZIMMER GSF LPS-FLEX;

_____ COUNT IV (d) ZIMMER GSF CR-FLEX;

_____ COUNT IV (e) ZIMMER MIS TIBIAL COMPONENTS;

COUNT V – NEGLIGENT MISREPRESENTATION

_____ COUNT V (a) ZIMMER LPS-FLEX;

_____ COUNT V (b) ZIMMER CR-FLEX;

 X COUNT V (c) ZIMMER GSF LPS-FLEX;

_____ COUNT V (d) ZIMMER GSF CR-FLEX;

_____ COUNT V (e) ZIMMER MIS TIBIAL COMPONENTS;

COUNT VI – EXPRESS WARRANTY

_____ COUNT VI (a) ZIMMER LPS-FLEX;

_____ COUNT VI (b) ZIMMER CR-FLEX;
_X_____ COUNT VI (c) ZIMMER GSF LPS-FLEX;
_____ COUNT VI (d) ZIMMER GSF CR-FLEX;
_____ COUNT VI (e) ZIMMER MIS TIBIAL COMPONENTS;

COUNT VI – BREACH OF EXPRESS WARRANTY

_____ COUNT VI (a) ZIMMER LPS-FLEX;
_____ COUNT VI (b) ZIMMER CR-FLEX;
_X_____ COUNT VI (c) ZIMMER GSF LPS-FLEX;
_____ COUNT VI (d) ZIMMER GSF CR-FLEX;
_____ COUNT VI (e) ZIMMER MIS TIBIAL COMPONENTS;

COUNT VII – BREACH OF IMPLIED WARRANTY

_____ COUNT VII (a) ZIMMER LPS-FLEX;
_____ COUNT VII (b) ZIMMER CR-FLEX;
_X_____ COUNT VII (c) ZIMMER GSF LPS-FLEX;
_____ COUNT VII (d) ZIMMER GSF CR-FLEX;
_____ COUNT VII (e) ZIMMER MIS TIBIAL COMPONENTS;

COUNT VIII – REDHIBITION

_____ COUNT VIII (a) ZIMMER LPS-FLEX;
_____ COUNT VIII (b) ZIMMER CR-FLEX;
_X_____ COUNT VIII (c) ZIMMER GSF LPS-FLEX;
_____ COUNT VIII (d) ZIMMER GSF CR-FLEX;
_____ COUNT VIII (e) ZIMMER MIS TIBIAL COMPONENTS;

☐ COUNT IX – LOSS OF CONSORTIUM
☐ COUNT X – WRONGFUL DEATH
☐ COUNT IX – LOSS OF CONSORTIUM
☐ COUNT X – WRONGFUL DEATH
☐ COUNT XI - SURVIVAL ACTION
☒ COUNT XII – VIOLATION OF CONSUMER PROTECTION
STATUTES:
LA R.S. 51:1405
☒ COUNT XIII – UNJUST ENRICHMENT
☒ COUNT XIV – PUNITIVE DAMAGES

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For compensatory damages requested and according to proof;
2. For punitive or exemplary damages against Defendants;
3. For all applicable statutory damages of the state whose laws will govern this action;
4. For an award of attorney's fees and costs;
5. For prejudgment interest and the costs of suit; and
6. For such other and further relief as this Court may deem just and proper;

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all claims in this action.

Dated: April 25, 2012.

Respectfully submitted,

/s/ Sheila M. Bossier

Sheila M. Bossier

BOSSIER & ASSOCIATES, PLLC

1520 North State Street

Jackson, MS 39202

Telephone: (601) 352-5450

Facsimile: (601) 352-5452

OF COUNSEL:

Richard A. Freese

Tim K. Goss

FRESE & GOSS, PLLC

Regions Harbert Center

1901 6th Avenue North

Suite 3120

Birmingham, AL 35203

Telephone: (205) 871-4144

Facsimile: (205) 871-4104

David P. Matthews

MATTHEWS AND ASSOCIATES

2905 Sackett Street

Houston, TX 77098

Telephone: (713) 522-5250

Facsimile: (713) 535-7184

CERTIFICATE OF SERVICE

I certify that on April 25, 2012, a copy of the foregoing *Plaintiffs' Short Form Complaint For Zimmer Nexgen Knee Implant Products Liability Litigation* was served, pursuant to waiver of service of summons process, F.R.C.P. 4(d) upon:

Peter Meyer
Nicole Brett
BAKER & DANIELS LLP
Suite 800
111 E. Wayne Street
Fort Wayne, IN 46802

/s/ Sheila M. Bossier
Sheila M. Bossier